

ASSEMBLY BILL

No. 1539

Introduced by Assembly Members Krekorian and Lieber
(Coauthor: Assembly Member Leno)
(Coauthor: Senator Steinberg)

February 23, 2007

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1539, as introduced, Krekorian. Sentencing.

Under existing law, a state prisoner who is diagnosed with a disease that would produce death within 6 months and whose release is deemed not to threaten the public safety may have his or her sentence recalled and be resentenced. Existing law additionally sets forth grounds under which the court has discretion to find that a prisoner is eligible for resentence or recall.

This bill would make prisoners who are diagnosed with a disease that would produce death within 6 months, and whose release is deemed not to threaten public safety, eligible to have their sentences recalled and to be resentenced and would expand the grounds under which the court exercises discretion to find eligibility for resentencing or recall. This bill would also oblige a physician employed by the Department of Corrections and Rehabilitation who determines that a prisoner has 6 months or less to live to inform the appropriate chief medical officer of that fact, and, if he or she concurs, would oblige the chief medical officer to inform the warden of that fact. This bill would also require the warden or the warden's representative to inform a prisoner given that prognosis of the recall and resentencing procedures, and to arrange

for the prisoner's designee to be informed of the prisoner's medical condition and prognosis, and of the procedures for recall and resentencing. This bill would require the warden or the warden's representative to contact a mentally unfit inmate's emergency contact and provide the contact with this information. This bill would also direct the warden or the warden's representative to keep the prisoner and the prisoner's designee apprised of the prisoner's medical condition and recall and resentencing proceedings. This bill would also provide that when a prisoner or his or her designee initiates recall and resentencing procedures, the chief medical officer and the warden or the warden's representative, if they find that the prisoner has 6 months or less to live, shall, within 48 hours of their finding, inform the prisoner or his or her designee of the recall and resentencing procedures. This bill would also require release of a prisoner who is resentenced within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period, and would require that the prisoner be given his or her medical records, state identification, medications, and property at the time of release. Finally, this bill would require the secretary to issue a directive to Department of Corrections and Rehabilitation staff explaining recall and resentencing procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code is amended to
2 read:
3 1170. (a) (1) The Legislature finds and declares that the
4 purpose of imprisonment for crime is punishment. This purpose
5 is best served by terms proportionate to the seriousness of the
6 offense with provision for uniformity in the sentences of offenders
7 committing the same offense under similar circumstances. The
8 Legislature further finds and declares that the elimination of
9 disparity and the provision of uniformity of sentences can best be
10 achieved by determinate sentences fixed by statute in proportion
11 to the seriousness of the offense as determined by the Legislature
12 to be imposed by the court with specified discretion.
13 (2) Notwithstanding paragraph (1), the Legislature further finds
14 and declares that programs should be available for inmates,
15 including, but not limited to, educational programs, that are

designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections *and Rehabilitation* is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the ~~Director of Corrections~~ *secretary*. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the ~~Director of Corrections~~ *secretary*.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the ~~Director of Corrections~~ *secretary*, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the ~~Director of Corrections~~ *secretary* or the ~~Board of Prison Terms~~ *Parole Hearings*, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the ~~Director of Corrections~~ secretary or the Board of ~~Prison Terms Parole Hearings~~ or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the ~~director~~ secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds ~~both of the following~~ *that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:*

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) *The prisoner is medically incapacitated by a medical condition that renders him or her permanently unable to move without assistance, permanently unable to perform activities of daily living such as dressing, eating, ambulating, or maintaining personal hygiene without assistance, or permanently ventilator-dependent.*

The Board of ~~Prison Terms Parole Hearings~~ shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the ~~director~~ secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) ~~The~~ *Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall*

1 *contact the inmate's emergency contact and provide the*
2 *information described in paragraph (2).*

3 *(5) The warden or the warden's representative shall provide*
4 *the prisoner and his or her family member, agent, or emergency*
5 *contact, as described in paragraph (4), updated information*
6 *throughout the recall and resentencing process with regard to the*
7 *prisoner's medical condition and the status of the prisoner's recall*
8 *and resentencing proceedings.*

9 *(6) Notwithstanding any other provisions of this section, the*
10 *prisoner or his or her family member or designee may*
11 *independently request consideration for recall and resentencing*
12 *by contacting the chief medical officer at the prison or the ~~Director~~*
13 *~~of Corrections~~ secretary. Upon receipt of the request, ~~if the chief~~*
14 *~~medical officer and the warden or the warden's representative~~*
15 *~~shall follow the procedures described in paragraph (4).~~ If the*
16 *~~director~~ secretary determines that the prisoner satisfies the criteria*
17 *set forth in paragraph (2), the ~~director~~ secretary or board may*
18 *recommend to the court that the prisoner's sentence be recalled.*
19 *The ~~director~~ secretary shall submit a recommendation for release*
20 *within 30 days in the case of inmates sentenced to determinate*
21 *terms and, in the case of inmates sentenced to indeterminate terms,*
22 *the ~~director~~ ~~may~~ secretary shall make a recommendation to the*
23 *Board of ~~Prison Terms~~ Parole Hearings with respect to the inmates*
24 *who have applied under this section. The board shall consider this*
25 *information and make an independent judgment pursuant to*
26 *paragraph (2) and make findings related thereto before rejecting*
27 *the request or making a recommendation to the court. This action*
28 *shall be taken at the next lawfully noticed board meeting.*

29 ~~(5)~~

30 *(7) Any recommendation for recall submitted to the court by*
31 *the ~~Director of Corrections~~ secretary or the Board of ~~Prison Terms~~*
32 *Parole Hearings shall include one or more medical evaluations,*
33 *a postrelease plan, and findings pursuant to paragraph (2).*

34 ~~(6)~~

35 *(8) If possible, the matter shall be heard before the same judge*
36 *of the court who sentenced the prisoner.*

37 *(9) If the court grants the recall and resentencing application,*
38 *the prisoner shall be released by the department within 48 hours*
39 *of receipt of the court's order, unless a longer time period is agreed*
40 *to by the inmate. At the time of release, the warden or the warden's*

1 *representative shall ensure that the prisoner has each of the*
2 *following in his or her possession: a discharge medical summary,*
3 *full medical records, state identification, parole medications, and*
4 *all property belonging to the prisoner. After discharge, any*
5 *additional records shall be sent to the prisoner's forwarding*
6 *address.*

7 *(10) The secretary shall issue a directive to medical and*
8 *correctional staff employed by the department that details the*
9 *guidelines and procedures for initiating a recall and resentencing*
10 *procedure. The directive shall clearly state that any prisoner who*
11 *is given a prognosis of six months or less to live is eligible for*
12 *recall and resentencing consideration, and that recall and*
13 *resentencing procedures shall be initiated upon that prognosis.*

14 (f) Any sentence imposed under this article shall be subject to
15 the provisions of Sections 3000 and 3057 and any other applicable
16 provisions of law.

17 (g) A sentence to state prison for a determinate term for which
18 only one term is specified, is a sentence to state prison under this
19 section.